

TFC Contract No. 18-163-000
McKinney York Architects
Amendment No. 2
RFQ No. 303-8-00473
Project No. 18-004-8803

**AMENDMENT NO. 2
TO THE
PROFESSIONAL ARCHITECTURAL/ENGINEERING SERVICES AGREEMENT
BETWEEN
THE TEXAS FACILITIES COMMISSION
AND
MCKINNEY ARCHITECTS, INC., D.B.A. MCKINNEY YORK ARCHITECTS**

THIS AMENDMENT NO. 2 is entered into by and between the Texas Facilities Commission, a state agency located at 1711 San Jacinto Boulevard, Austin, Texas 78701 (hereinafter referred to as “TFC”), as Owner (as defined in *2015 Uniform General Conditions*, Section 1.28) and McKinney Architects, Inc., d/b/a McKinney York Architects, located at 1301 East 7th Street, Austin, Texas 78702 (hereinafter referred to as “A/E”) (collectively referred to as the “Parties”), to amend the Agreement for professional architectural and engineering services dated May 22, 2018 (hereinafter referred to as the “Agreement”), as amended.

WHEREAS, on May 22, 2018, the Parties entered into that one certain *Professional Architectural/Engineering Services Agreement, TFC Contract No. 18-163-000*; and

WHEREAS, on August 27, 2019, the Parties executed Amendment No. 1 to include Additional Services and Fees and to extend the Duration of the Agreement; and

WHEREAS, the Parties now desire to provide for Additional Services and Fees, and to include certain provisions adopted by TFC subsequent to the execution of the Agreement, in order to reflect the will of the Texas Legislature, and to comply with requirements promulgated by the State Auditor’s Office and the Comptroller of Public Accounts;

NOW, THEREFORE, the Parties agree as follows:

1. Unless provided otherwise herein, all terms and phrases in initial caps herein shall have the same meaning as the terms and phrases with initial caps in the original Agreement.
2. The Parties agree to modify ARTICLE II – SCOPE OF SERVICES, Section 2.1, Scope of Services, to include certain additional design development services as more particularly described in A/E’s Proposal, dated March 12, 2020, consisting of six (6) pages, and attached hereto and incorporated herein for all purposes as Exhibit A-2.
3. The Parties hereby agree to modify ARTICLE IV – CONSIDERATION, Section 4.1, Contract Limit – Fees and Expenses, Subsection 4.1.1, Fixed Fee, by reflecting additional compensation to be paid to A/E in the amount of Ninety-Two Thousand Six Hundred Twenty and No/100 Dollars (\$92,620.00), thus increasing the amount of the fixed fee from One Million Five Hundred Seventy-Eight Thousand Five Hundred Fifty-Five and No/100 Dollars (\$1,578,555.00) to a total amount not to exceed One Million Six Hundred Seventy-One Thousand One Hundred Seventy-Five and No/100 Dollars (\$1,671,175.00). Subsection 4.1.1 shall read in its entirety as follows.

“4.1.1. Fixed Fee. In exchange for the proper performance and timely delivery of the Professional Services as specified by this Agreement, A/E shall be paid a fixed fee of One Million Six Hundred Seventy-One Thousand One Hundred Seventy- Five and No/100 Dollars (\$1,671,175.00). Any Professional Services performed or delivered by A/E prior to the Effective Date of this Agreement or after its termination cannot be compensated.”

4. The Parties agree to modify ARTICLE VI – WARRANTIES AND REPRESENTATIONS BY A/E, Section 6.1, Warranties and Representations by A/E, by adding subsections 6.1.17 through and including 6.1.21, as follows.

“6.1.17. Certification Concerning Restricted Employment for Former State Officers or Employees Under Government Code § 572.069. A/E certifies that it has not employed and will not employ a former TFC or state officer who participated in a procurement or contract negotiation for TFC involving A/E within two (2) years after the state officer or employee left state agency employment or service. This certification only applies to former state officers or employees whose service or employment ceased on or after September 1, 2015.

6.1.18. Disaster Relief Contract Violation. Under Sections 2155.006 and 2261.053, Texas Government Code, A/E certifies that the individual or business entity named in this Agreement is not ineligible to receive the specified Agreement and acknowledges that this Agreement may be terminated and payment withheld if this certification is inaccurate.

6.1.19. Excluded Parties. A/E certifies that it is not listed on the federal government’s terrorism watch list as described in Executive Order 13224.

6.1.20. Suspension and Debarment. A/E certifies that it and its principals are not suspended or debarred from doing business with the state or federal government as listed on the State of Texas Debarred Vendor List maintained by the Texas Comptroller of Public Accounts and the System for Award Management (SAM) maintained by the General Services Administration.

6.1.21. Human Trafficking Prohibition. Pursuant to Section 2155.0061 of the Texas Government Code, A/E certifies that it is not ineligible to receive this agreement and acknowledges that this Agreement may be terminated and payment withheld if A/E’s certification in this matter is inaccurate. TFC may not award a contract, including a contract for which purchasing authority is delegated to a state agency, that includes proposed financial participation by a person who, during the five-year (5) period preceding the date of the award, has been convicted of any offense related to the direct support or promotion of human trafficking.

6.1.22. Use of State Property. A/E is prohibited from using State Property for any purpose other than performing services authorized under the Agreement. State Property includes, but is not limited to: TFC’s office space, identification badges, TFC information technology equipment and networks (e.g., laptops, portable printers, cell phones, iPads, external

hard drives, data storage devices, any TFC issued software, and the TFC Virtual Private Network (VPN client)), and any other resources of TFC. A/E shall not remove State Property from the continental United States. In addition, A/E may not use any computing device to access TFC's network or e-mail while outside of the continental United States. A/E shall not perform any maintenance services on State Property unless the Agreement expressly authorizes such services. During the time that State Property is in the possession of A/E, A/E shall be responsible for (i) all repair and replacement charges incurred by TFC that are associated with loss of State Property or damage beyond normal wear and tear; and (ii) all charges attributable to A/E's use of State Property that exceeds the scope of the Agreement. A/E shall fully reimburse such charges to TFC within ten (10) calendar days of A/E's receipt of TFC's notice of amount due. Use of State Property for a purpose not authorized by agreement shall constitute breach of contract and may result in termination of the Agreement and the pursuit of other remedies available to TFC under contract, at law, or in equity."

5. The Parties agree to modify ARTICLE XI – MISCELLANEOUS PROVISIONS, subsections 11.1.1, Acts or Omissions, 11.1.2, Infringements, and 11.3, Taxes / Workers' Compensation / Unemployment Insurance-Including Indemnity, by adding the following sentence to each subsection.

"THIS SECTION IS NOT INTENDED TO AND SHALL NOT BE CONSTRUED TO REQUIRE A/E TO INDEMNIFY OR HOLD HARMLESS THE STATE OR TFC FOR ANY CLAIMS OR LIABILITIES RESULTING FROM THE NEGLIGENT ACTS OR OMISSIONS OF TFC OR ITS EMPLOYEES (TEX GOV'T CODE SECTION 2254.0031)."

6. The Parties agree to modify ARTICLE XI – MISCELLANEOUS PROVISIONS, by adding subsection 11.1.4, as follows.

"11.1.4. ENGINEERING AND ARCHITECTURE. A/E SHALL INDEMNIFY AND HOLD HARMLESS THE STATE OF TEXAS AND TFC, AND/OR THEIR OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED DAMAGES, COSTS, ATTORNEY FEES, AND EXPENSES TO THE EXTENT CAUSED BY, ARISING OUT OF, OR RESULTING FROM ANY ACTS OF NEGLIGENCE, INTENTIONAL TORTS, WILLFUL MISCONDUCT, PERSONAL INJURY OR DAMAGE TO PROPERTY, AND/OR OTHERWISE RELATED TO A/E'S PERFORMANCE, AND/OR FAILURES TO PAY A SUBCONTRACTOR OR SUPPLIER BY THE A/E OR ITS AGENTS, EMPLOYEES, SUBCONTRACTORS, ORDER FULFILLERS, CONSULTANTS UNDER CONTRACT TO A/E, OR ANY OTHER ENTITY OVER WHICH THE CONTRACTOR EXERCISES CONTROL, OR SUPPLIERS OF SUBCONTRACTORS IN THE EXECUTION OR PERFORMANCE OF THE AGREEMENT. THE DEFENSE SHALL BE COORDINATED BY A/E WITH THE OFFICE OF THE TEXAS ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND A/E MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST

OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE TEXAS ATTORNEY GENERAL. A/E AND TFC AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM. THIS SECTION IS NOT INTENDED TO AND SHALL NOT BE CONSTRUED TO REQUIRE VENDOR TO INDEMNIFY OR HOLD HARMLESS THE STATE OR TFC FOR ANY CLAIMS OR LIABILITIES RESULTING FROM THE NEGLIGENT ACTS OR OMISSIONS OF TFC OR ITS EMPLOYEES (TEX GOV'T CODE SECTION 2254.0031)."

7. The Parties agree to modify ARTICLE XI – MISCELLANEOUS PROVISIONS, by adding subsection 11.9.1, Cybersecurity Training Required, as follows.

“11.9.1. Cybersecurity Training Required. If A/E has ‘access,’ as that term is defined in 1 Tex. Admin. Code § 202.1, to any state computer system or database, then, pursuant to Tex. Gov’t Code § 2054.5192, A/E and its subcontractors, officers, and employees shall complete a cybersecurity training program certified under Tex. Gov’t Code §2054.519. The cybersecurity training program must be completed by the A/E and its subcontractors, officers and employees during the term and any renewal period of the Agreement. A/E shall verify completion of the training program to TFC pursuant to, and in accordance with, Tex. Gov’t Code § 2054.5192.”

8. The Parties agree to modify ARTICLE XI – MISCELLANEOUS PROVISIONS, by inserting Sections 11.28 through and including 11.31, and re-numbering existing Section 11.28, Entire Agreement and Modification, as Section 11.31, so that the inserted and existing sections read in their entirety, as follows.

“11.28. False Statements; Breach of Representations. By signature to this Agreement, A/E makes all the representations, warranties, guarantees, certifications and affirmations included in this Agreement. If A/E signs this Agreement with a false statement or it is subsequently determined that A/E has violated any of the representations, warranties, guarantees, certifications or affirmations included in this Agreement, A/E shall be in default under this Agreement, and TFC may terminate or void this Agreement for cause and pursue other remedies available to TFC under this Agreement and applicable law.

11.29. Abandonment and Default. If A/E defaults on this Agreement, TFC reserves the right to cancel the Agreement without notice and either re-solicit or re-award the Agreement to the next best responsive and responsible respondent. The defaulting A/E will not be considered in the re-solicitation and may not be considered in future solicitations for the same type of work.

11.30. Antitrust and Assignment of Claims. A/E represents and warrants that neither A/E nor any firm, corporation, partnership, or institution represented by A/E, or anyone acting for such firm, corporation or institution has (i) violated the antitrust laws of the State of Texas under Tex. Bus. & Com. Code, Chapter 15, or the federal antitrust laws; or (ii) communicated directly or indirectly the proposal to any competitor or any other person engaged in such line of business during the procurement process for this Agreement. A/E assigns to the

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State of Texas all of A/E's rights, title, and interest in and to all claims and causes of action A/E may have under the antitrust laws of Texas or the United States for overcharges associated with the Agreement.

11.31. Entire Agreement and Modification. This Agreement and its integrated attachment(s) constitute the entire agreement of the parties and such are intended as a complete and exclusive statement of the promises, representations, negotiations, discussions, and other agreements that may have been made in connection with the subject matter hereof. Unless an integrated attachment to this Agreement specifically displays a mutual intent to amend a particular part of this Agreement, general conflicts in language between any such attachment and this Agreement shall be construed consistently with the terms of this Agreement. Unless otherwise expressly authorized by the terms of this Agreement, no modification, renewal, extension, or amendment to this Agreement shall be binding upon the parties unless the same is in writing and signed by the respective parties hereto."

9. All other terms and conditions of the Agreement not expressly amended herein shall remain in full force and effect.

IN WITNESS WHEREOF, the Parties have made and executed this Amendment No. 2 to be effective as of the date of the last Party to sign.

TEXAS FACILITIES COMMISSION

**MCKINNEY ARCHITECTS, INC., DBA
 MCKINNEY YORK ARCHITECTS**

DocuSigned by:
 By: Mike Novak
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DocuSigned by:
 By: Charles A. York
 DC2DBE4FB18D4E5...

Mike Novak

Charles A. York

Executive Director

Principal

Date of execution: 04/29/2020 | 8:17 AM CDT

Date of execution: 04/29/2020 | 6:15 AM PDT

PM DJ

GC CR

Dir MW

DED JR

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Exhibit A-2

Proposal date March 12, 2020



February 21, 2020
March 12, 2020 Revised

Mr. Daniel Yen, MBA, PMP, CTCM, RID, LEED AP
Project Manager
Texas Facilities Commission
Facilities Design & Construction
1711 San Jacinto Blvd.
Austin, TX 78701
Office (512) 463-5554
Daniel.yen@tfc.state.tx.us

**RE: Proposal for Professional Services
PROJECT NO. 18-004-8803
Texas School for the Deaf
Toddler Learning Center and Central Services Center
Additional Services #5 Revised**

Dear Mr. Yen:

McKinney York Architects (MYA) is pleased to provide this proposal for additional services for Professional Services for the Texas Facilities Commission (TFC) Texas School for the Deaf (TSD) Toddler Learning Center and Central Services Center (the PROJECT).

Scope of Work

Item #1: Provide a separate bid package delineating the site scope of work in order to expedite beginning of construction. See attached initial description provided by the CMR Chasco. Consultants included in the services are civil engineering, mechanical/electrical/plumbing/fire protection engineering, IT/AV/Security consulting, and architectural/project management. Services related to phasing of the work or multiple bid packages were excluded from our initial proposal (see Exclusions, page 7) but can be provided for additional services.

In order to provide GMP #1 Site Package to Chasco, the consultant team created a stand alone set of sealed construction documents (drawings and specifications) for Chasco to use as the basis for a separate GMP to allow construction to begin. This effort included coordinating with Chasco to determine the scope of work appropriate for GMP #1 to be shown on the documents, culling through the documents and specifications to include information to form the basis for GMP #1, changing title blocks and specification headers, and recompiling the drawing set and specification book. The sheets that will be in "GMP #1 Site Package" are as follows along with associated specification sections and the TFC/MYA "front end" in the project manual:

- A0-000 Cover Sheet
- A0-001 General Notes and Abbreviations
- A0-002 Drawing Index
- A0-100 Accessibility Requirements
- C0-00 General Notes
- C1-100 Existing Conditions and Demolition Plan
- C1-200 Master Site and Paving Plan

- C1-201 Site Plan
- C1-202 Site Plan Details
- C1-300 Erosion and Sedimentation Control Plan
- C1-301 Erosion and Sedimentation Control Plan
- C1-400 Grading Plan
- C1-500 Stormsewer Plan
- C1-600 Utility Plan
- C1-601 Utility Details
- S0-000 Structural Notes
- S0-001 Structural Notes
- S0-002 Structural Notes
- S0-003 Special Inspections
- S2-101 Substation Foundation Plan
- S8-300 Typical Concrete Details
- S8-301 Typical Slab-on-Void Details
- S8-302 Typical Slab-on-Void Details
- S8-310 Slab on Void Foundation Sections
- S8-313 Site Retaining Wall Details
- S8-320 Typical Pier Details
- S8-500 Base Plate Details
- A1-201 Site Plan – Demolition
- A2-201 Site Plan – Architectural, Overall
- A2-202 Site Plan – Architectural, West
- A2-203 Site Plan – Architectural, East
- A2-204 Enlarged Site Plan & Site Sections
- A2-205 Enlarged Site Plan & Site Sections
- A2-206 Site Sections
- MP1-101 Site Plan – Mechanical and Plumbing
- M0-001 Mechanical Legend & General Notes
- E0-001 Electrical Legend & General Notes
- E2-100 Overall Electrical Site Plan
- E2-101 Site Plan – Electrical
- P0-001 Plumbing Legends & General Notes
- TD0-001 Legend and Notes – Communications
- TD2-201 Site Plan – Communications

Item #2: Revise final construction documents set to reflect scope changes and deletions requested by the Owner at the end of the Value Engineering. See status of VE log items indicating Owner's current decisions on scope of work that will form the basis for this proposal for services. Services for items on Chasco VE log indicated as not accepted or with a question mark are excluded from this proposal. Consultants included in the services are civil engineering, structural engineering, mechanical/electrical/plumbing/fire protection engineering, IT/AV/Security consulting, landscape architecture and architecture/project management. Services related to revisions to previously approved designs or revisions to accommodate changes that are at odds with Owner's previous directions or approvals are indicated to be a change in service in our initial proposal (see Exclusions, page 7) and shall be compensated on a mutually agreeable negotiated basis.

Civil Engineering (Garza EMC):

- VE 1.02: Reduce quantity of pavers

Landscape Architecture (Studio Balcones):

- VE 2.01 Reduce selected Playground Equipment
- VE 2.02 Reduce Quantity of Trees
- VE 2.03 Reduce Quantity of Plantings by Half/Revise Landscape Plan as recommended by consultant
- VE 2.04: Single-wythe CMU in lieu of metal fence for substation enclosure
- VE 2.06 Omit trash cans and benches
- VE 2.07 Omit wood slats on concrete benches, raise concrete to seat level
- VE 2.09 Change fencing to 2-Rail Ornamental Iron fencing in lieu of welded wire fencing
- VE 2.091 Reduce height of fence

Structural Engineering (Structures):

- VE 3.01: Steel frame in lieu of concrete primary frame

Architecture (McKinney York):

- VE 2.04: Single-wythe CMU in lieu of metal fence for substation enclosure
- VE 2.08: Omit exterior blackboard
- VE 3.01: Steel frame in lieu of concrete primary frame (includes coordination of Structural)
- VE 4.04: Delete or reduce mechanical room bump out envelope
- VE 4.05: Indicate ELC outdoor storage / extent of porch as Add Alternate
- VE 4.06/4.07: Delete or reduce extents of wood wall & ceiling at Lobby and Board Room
 - Includes revision of finished renderings
- VE 4.09a: Reduce extents of masonry on south façade Option 1 or VE 4.09b: Reduce extents of masonry on south façade Option 2
 - Includes revision of sketch renderings
- VE 4.11: CMU veneer in lieu of glazed brick at ELC as Add Alternate
 - Includes revision of sketch renderings
- VE 4.12: Replace LVT with carpet in select locations
- VE 4.14: Delete clouds in ELC
 - Includes revision of finished renderings
- VE 4.17: Reduce/Revise extents of built-in millwork
- VE 4.19: Revise interior glazing to be Rayco in lieu of storefront
- VE 4.20: Reduce interior glazing extents by half
- VE 4.23: Delete 1 folding partition, modify MP layout for 2 rooms in lieu of 3 rooms as Add Alternate
- VE 4.30: Reduce extents of exterior glazing
- VE 4.32: Replace automatic sliding doors with swing doors at all entries
- VE 4.38: 8x16 CMU veneer in lieu of spec'd large format block
- VE 4.XX: Wilsonart Thinscape in lieu of solid surface except as noted
- Coordination of MEP/FS and IT/AV/Security
- Coordination of Civil and Landscape
- All other VE items on attached VE log indicated to be accepted by the Owner shall be incorporated in revised documents for scope of work at no additional fees
- Excluded VE 4.26: Workstations in lieu of offices in Superintendent's Suite
- Excluded VE 4.35: Switch elevator to MRL, delete machine room

MEP/FP Engineering (TG+W Engineering):

- VE 4.04: Redesign MEP systems to delete or reduce mechanical room bump out
- VE 4.27: Revise hardware sets for no electrified hardware at select locations

- VE 4.31: All manual shades in lieu of motorized, delete controls interface, provide conduit to vicinity of pocket for future
- VE 4.32: Replace automatic sliding door(s) with swing doors at all entries
- VE 5.04: Remove OA Pre-processing path on AHU
- VE 5.05: Remove HW and CHW bypass pipes and associated controls
- The following VE items shall be incorporated in revised documents for scope of work at no additional fees
 - VE 5.02: Utilize alternate allowable AHU manufacturer
 - VE 5.03: Remove Economizer
 - VE 5.07: Increase allowable length of flexible duct to reduce metal ductwork. TG+W recommends handling item as a substitution on the shop drawings so no redesign/redrawing fees are incurred.
 - VE 5.09: Thermo-static Mixing Valve
 - VE 5.11: Pro-press in lieu of solder on CW & HW piping
 - VE 6.02: MC Cable where allowable by TFC
 - VE 6.03: Alternate lighting package
 - VE 7.03: Pro-press in lieu of solder on domestic water piping
- Excluded VE 4.35: Switch elevator to MRL, delete machine room
- Excluded VE 7.05: Alternate taps in to existing system.

IT/AV/Security Consulting (Datacom Design Group):

- VE 4.27: Revise hardware sets for no electrified hardware at select locations
- VE 9.02: Modify MP Room layout for (2) rooms in lieu of (3) rooms – reduce AV accordingly
- VE 10.01: Reduce card readers for service spaces
- VE 10.02: Reduce card readers for public spaces

Schedule of Compensation

Additional Services:

Item #1: Additional services shall be a stipulated sum of \$5,920.

Civil Engineering (Garza EMC): \$1,800

Architectural (McKinney York Architects): \$1,500

MEP/FP Engineering (TG+W): \$1,500

IT/AV/Security (Datacom Design Group): \$1,120

Item #2: Additional services shall be a stipulated sum of \$86,700.

Civil Engineering (Garza EMC): \$2,200

Landscape Architecture (Studio Balcones): \$4,200 (includes \$600 for irrigation)

Structural Engineering (Structures): \$29,600

Architecture (McKinney York Architects): \$39,420

MEP/FP Engineering (TG+W): \$10,000

IT/AV/Security (Datacom Design Group): \$1,280

Total Additional Services	\$92,620
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Schedule for Completion of Services

We will perform the work in accordance with the schedule attached.

Please feel free to call if you have any questions.

Respectfully submitted,



Michelle Rossomando, AIA
Principal

Attachments: Project GMP-VE Schedule 02.20.20
Chasco VE log 02.21.20
Garza EMC Engineers Inc Proposal 02.26.20
Studio Balcones Proposal 02.26.20
Structures Proposal dated 02.18.20
TG+W Engineers Inc Proposal 03.12.20
Datacom Design Group Proposal 02.04.20



PROJECT #18-004-8803
Texas School for the Deaf
Early Learning Center and Central Services Center

GMP / VE Schedule
02.20.20

Phase	Action	Start	End
GMP #1 – Sitework		02/03/2020	03/23/2020
Issue Bid Package #1	MYA		02/19/2020*
GMP #1 Due	Chasco		02/26/2020
Approve GMP #1	TFC		03/04/2020
Mobilize / NTP	Chasco		03/09/2020
Value Engineering		01/14/2020	03/13/2020
Provide VE Scope Diagrams	MYA		01/27/2020
ROM VE Scope Diagrams Costs Due	Chasco		02/12/2020
Review VE Log	MYA/ TFC/ Chasco		02/20/2020
Approve VE Log	TFC		02/26/2020
Revise 100% CD's	MYA	03/02/2020**	04/10/2020**
GMP #2 – Building		04/13/2020	04/27/2020
Issue Bid Package #2	MYA		04/13/2020
GMP #2 Due	Chasco		04/27/2020
Approve GMP #2	TFC		05/04/2020
Mobilize / NTP	Chasco		05/18/2020
Construction		03/09/2020	05/2021***
Punch List		06/2021	07/2021****
Owner Occupancy		08/2021	08/2021

- * Pending approval/direction of TFC on 02/19/2020
- ** Pending extent of VE selection, pending approval/direction of TFC
- *** Proposed Substantial Completion Date
No Change from Current Project Schedule without TFC approval
- **** Proposed Final Completion Date
No Change from Current Project Schedule without TFC approval